JAN 11 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 748

JACK PINKSTON, GARNISHEE,
Petitioner,

vs.

NICHOLAS M. CARTER, ET UX
RUTH A. CARTER,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

JACK PINKSTON, Petitioner, Pro Se,
A Member of the Bar of this Court
8403 Georgia Avenue
Silver Spring, Maryland
Phone 585-2844

FRANKLIN PRESS, INC., PRINTERS, GAITHERSBURG, MD.

INDEX

	Page
Petition for Writ of Certiorari	1
Opinions below	1-2
Grounds of Jurisdiction	2
Question presented	2-3
Statutes Involved	3
Statement	3-5
Argument and Authorities amplifying reasons for granting writ	6-19
Conclusion	19-20
Prayer	20

CASES CITED

Bowles v. Stonebraker, 1949, Mun. App., D. C., 65 A.2d 575	14
Collins v. McDonald, 258 U. S. 416, 42 S. Ct. 326, 66 L. Ed. 692	16
Durfee v. Duke, No. 37, October Term, 1963, S. Ct.	4
Durst v. Tautges, Wilder & McDonald, 7 Cir. 44 F.2d 507	17
Engle v. Manchester, 46 App. D. C. 220	17
Galpin v. Page, 85 U. S. 350, 18 Wall 350, 21 L. Ed. 959	16
Harkin v. Brundage, 276 U. S. 36, 48 S. Ct. 268, 72 L. Ed. 457	15

INDEX (Continued)

Hollige v. Crumpler, 63 App. D. C. 330 17

J. & H Stables, Inc. v. Robinson, 1960, 221 Md. 365, 157 A.2d 451 17

Lamb v. Schmidt, 285 U. S. 222, 52 S. Ct. 317, 76 L. Ed. 720 17

McClaughry v. Deming, 186 U. S. 49, 22 S. Ct. 786, 46 L. Ed. 1049 16

Page Co. v. McDonald, 261 U. S. 446, 43 S. Ct. 416, 67 L. Ed. 737 17

Penn Co. v. Pennsylvania, 294 U. S. 189, 55 S. Ct. 386, 79 L. Ed. 850 15

Peterson v. Sucro, 1938, C. C. A., 4 Cir., 93 F.2d 878, 882 14

Pinkston v. Carter, 150 A.2d 629 17-18

Robertson v. Gordon, 226 U. S. 311, 33 S. Ct. 105, 57 L. Ed. 236 6

Stewart v. Ramsey, 242 U. S. 128, 37 S. Ct. 44, 61 L. Ed. 192 17

Stutsman v. Hilltop Farm & Feed Co., (Iowa), 45 N. W. 2d 892 17

Vanvakis, in Re, 99 N. Y. S. 2d 406 17

Warm Springs Irr. Dist. v. May, 1941, 9 Cir., 117 F.2d 802 16

Western Union Tel. Co. v. Pennsylvania, 1961, 368 U. S. 71, 82 S. Ct. 199, 7 L. Ed. 2d 139 16

CONSTITUTIONAL PROVISIONS AND STATUTES CITED

Constitution of Maryland, Art. 4, Sec. 20 15

Maryland Code, 1951 Ed:
Art. 16, Secs. 272, 273 & 276 10-13
Art. 26, Sec. 40 15
Art. 47, Sec. 36 10-13

District of Columbia Code, 1951 Ed:
Title 11, Sec. 11-401 15
Title 11, Sec. 11-771 17
Title 28, Ch. 26, Sec. 28-2602 13

District of Columbia Municipal Court Rule 69-e 12-14

MISCELLANEOUS

49 C. J. S., Judgments, Sec. 425-b, p. 841 16

Freeman on Judgments, 5th Ed., Vol. 1, Sec. 322 p. 643-45 6

Freeman on Judgments, 1925 Ed., Sec. 642, p. 1351 et seq. 6

INDEX TO APPENDIX ATTACHED HERETO

Order extending time to file petition for Writ of Certiorari 1

Opinion of U. S. Court of Appeals, 4 Cir. 1-2

Order of U. S. District Court 2-3

Order appointing trustee by Circuit Court for Prince George's County, Maryland 3-4

INDEX (Continued).

Memorandum Opinion of Municipal Court for the District of Columbia 4-6

Opinion of Municipal Court of Appeals for the District of Columbia, Pinkston v. Carter, 150 A.2d 629 7-12

Deed of Trust—Benefit of Creditors 12-16

Answer of Garnishee 16-17

Plaintiff's Traverse of Garnishee's Answer 18

Excerpt from Trusteeship Account 19

CONSTITUTIONAL PROVISIONS AND STATUTES CITED

Constitution of Maryland, Art. 4, Sec. 20 19

Maryland Code, 1951 Ed:
- Art. 16, Secs. 272, 273 & 276 20-21
- Art. 26, Sec. 40 20
- Art. 47, Sec. 36 21

District of Columbia Code, 1951 Ed:
- Title 11, Sec. 11-101 22
- Title 11, Sec. 11-771 22
- Title 28, Ch. 26, Sec. 28-2602 22

District of Columbia Municipal Court Rule 69-e .. 23

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. .....

JACK PINKSTON, GARNISHEE,

Petitioner,

vs.

NICHOLAS M. CARTER, ET UX

RUTH A. CARTER,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

TO — THE HONORABLE: THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Jack Pinkston, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above case on September 30, 1963.

OPINIONS BELOW.

The memorandum opinion of the District Judge (R. 45), apparently unreported, is printed in Appendix hereto, infra, p. 2-3. The opinion of the Circuit Court of Appeals, reported in 322 F.2d 476, is printed in Appendix hereto.

infra, p. 2. Also necessary to a better understanding of this case is the order of the Circuit Court for Prince George's County, Maryland, dated May 1, 1957, appointing this petitioner as trustee to liquidate the assets of Holiday Homes, Inc. and Holiday Homes Mfg. Co., Inc. in a trusteeship proceeding for the benefit of all their creditors, which had been pending under the jurisdiction of said court since April 4, 1955, which order is not reported but is printed in Appendix hereto, infra, p. 3-4; the memorandum opinion, including findings of fact and conclusions of law, of the Judge of the Municipal Court for the District of Columbia, dated September 29, 1958 (pursuant to which, judgment was entered against this petitioner November 5, 1958), which memorandum is not reported but is printed in Appendix hereto, infra, p. 4-6; and the opinion of the Municipal Court of Appeals for the District of Columbia, decided May 1, 1959, reported 150 A.2d 629 and printed in Appendix hereto, infra, p. 7-12.

GROUNDS OF JURISDICTION

The judgment sought to be reviewed is the judgment of the United States Court of Appeals for the Fourth Circuit, entered on September 30, 1963, Appendix, infra, p. 2.

On December 30, 1963, Mr. Justice White entered an order extending time to file petition for writ of certiorari herein to and including January 13, 1964, Appendix, infra, p. 1

The statutory provision believed to confer jurisdiction on this Court to review the judgment in question by writ of certiorari is 28 U. S. C., Sec. 1254 (1).

QUESTION PRESENTED

Did the United States District Court for the District of Maryland have the power, and upon proper averments and tender of record evidence by petitioner the duty, to

inquire into the jurisdiction of the Municipal Court for the District of Columbia, a court of inferior jurisdiction, to consider the questions presented to it, to ignore the prior proceedings and decrees of the Circuit Court for Prince George's County, Maryland, a court of general and superior jurisdiction, pertaining to the same res, to deny petitioner, a citizen of Maryland, his right to due process of law in several respects, and to render the judgment which the United States District Court for Maryland then was being called upon to enforce under the rules pertaining to recording of inferior court judgments in the U. S. District Court for the District of Columbia and the transfer of those judgments to other districts?

STATUTES INVOLVED

(Quoted in Appendix hereto, infra)

	Page
Constitution of Maryland, Art. 4, Sec. 20	19
Maryland Code, 1951 Ed., Art. 16, Secs. 272, 273 & 276	20-21
Maryland Code, 1951, Ed., Art 26, Sec. 40	20
Maryland Code, 1951 Ed., Art. 47, Sec. 36	21
District of Columbia Code, 1951 Ed:	
Title 11, Sec. 11-101	22
Title 11, Sec. 11-771	22
Title 28, Ch. 26, Sec. 28-2602	22
District of Columbia Municipal Court Rule 69-c	23

STATEMENT

Writ of Certiorari is sought herein to review the judgment of the United States Court of Appeals for the Fourth Circuit, in case No. 9075 in said court, reported in 322 F.2d 476, styled Nicholas M. Carter, Ruth A. Carter, Appellees, vs. Jack Pinkston, Garnishee, Appellant, Appendix, infra, p. 2, affirming the order of the U. S. Dis-

trict Court for the District of Maryland denying petitioner's motion to quash attachments issued out of the U. S. District Court for the District of Maryland and levied against assets of petitioner in Maryland pursuant to a judgment of the Municipal Court for the District of Columbia. Petitioner's said motion to quash was based upon the total invalidity of the Municipal Court judgment for want of jurisdiction either of the subject matter or of the person of this petitioner, a citizen of Maryland, as garnishee, as well as upon denial of due process of law in several respects; but, notwithstanding the very limited statutory jurisdiction of the Municipal Court for D. C., a court of inferior jurisdiction, the nature of the subject matter involved, the prior proceedings and decrees of the Circuit Court for Prince George's County, Maryland, a court of superior and general jurisdiction, and the averments of lack of the due process of law in several respects, the Honorable U. S. District Judge for the District of Maryland held that the U. S. District Court in Maryland was without power to inquire into the jurisdiction of the Municipal Court for the District of Columbia or into the validity of the judgment of the Municipal Court then being enforced by the U. S. District Court for the District of Maryland."

This ruling by the Honorable U. S. District Court for Maryland seems exactly contrary to the ruling of the Supreme Court of the United States in *Durfee v. Duke*, No. 37, October Term, 1963, decided December 2, 1963, where, under similar circumstances as to territorial jurisdiction, this Court said (p. 10):

> "For the reasons stated, we hold in this case that the Federal Court in Missouri had the power, and upon proper averments the duty, to inquire into the jurisdiction of the Nebraska courts to render the decree quieting title to the land in the petitioners."

This view of the petitioner that the U. S. District Court

for the District of Maryland had both the power and the duty to inquire into the jurisdiction of the Municipal Court for the District of Columbia is made even stronger by the facts that in the Durfee vs. Duke case, supra, both of the Nebraska courts were courts of general or superior jurisdiction, while in the instant case the judgment sought to be enforced against this petitioner is a judgment of the Municipal Court for the District of Columbia, a court of inferior and very limited jurisdiction. Furthermore, in the instant case, the Municipal Court plainly ignored the prior proceedings and decrees of the Circuit Court for Prince George's County, Maryland, a court of general and superior jurisdiction, in considering the issues presented and entering the judgment now sought to be enforced.

Petitioner will endeavor to refrain from treating the law, facts, and circumstances of this case as fully in this petition for writ of certiorari as the same should be treated in the event the writ is granted; but petitioner feels that some discussion is essential for a better understanding of the jurisdictional issues involved.

For brevity, petitioner is submitting herewith 9 copies of the Appendix to Appellant's Brief in the Court below. References hereinafter to "(App.)" refer to page numbers in said appendix. References to "Garnishee's Exhibit No. 1, pg.)" refer to the page number in Garnishee's Exhibit No. 1 in the Trial Court, which is the record of the Municipal Court for the District of Columbia. References to "(R.)" refer to the page number in the record of the Court below. References to "(Appendix, infra, p.)" mean the page number in the Appendix to this petition, infra.

ARGUMENT AND AUTHORITIES AMPLIFYING REASONS FOR GRANTING WRIT

Petitioner's position is that the Municipal Court for the District of Columbia has certain jurisdiction prescribed by Congress; that neither the parties to an action, the Municipal Court of Appeals for the District of Columbia, nor anyone else, except Congress, can enlarge upon said Municipal Court's jurisdiction, by agreement or otherwise; and that the adjudication of any matter beyond said Municipal Court's jurisdiction as prescribed and limited by Congress is void. Petitioner's further position is that the Muncipal Court judgment here in question is void for several reasons, as shown hereinafter.

That a void judgment never can become res judicata, please see Robertson v. Gordon, 226 U. S. 311, 33 S. Ct. 105, 57 L. Ed. 236; Freeman on Judgments, 1925 Ed., Sec. 642, pg. 1351 et seq.

An excellent expression covering the legal ineffectiveness of a void judgment is to be found in Freeman on Judgments, 5th Ed., Vol. 1, Sec. 322, p. 643-45, wherein it is said:

> "A judgment void upon its face and requiring only an inspection of the record to demonstrate its invalidity is a mere nullity, in legal effect no judgment at all, conferring no right, and affording no justification. Nothing can be acquired or lost by it, it neither bestows nor extinguishes any right, and may be successfully assailed whenever it is offered as the foundation for the assertion of any claim or title. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void. The parties attempting to enforce it may be responsible as trespassers. No action upon the part of the plaintiff, no inaction on the part of the defendant, no resulting equity in the hands of third persons, no power residing in any legislative or other department of the govern-

nent can invest if with any of the elements of power or vitality. * * * The fact that the void judgment has been affirmed on review in an appellate court or an order or judgment renewing or reviving it entered adds nothing to its validity. Such a judgment has been characterized as a dead limb upon the judicial tree, which may be chopped off at anytime, capable of bearing no fruit to plaintiff but constituting a constant menace to defendant."

Jurisdiction to adjudicate issues regarding trusteeships for the benefit of creditors, like titles to land, in most if not all jurisdictions, is expressly conferred upon courts of superior jurisdiction and denied to courts of inferior jurisdiction. Courts have no difficulty in holding that any judgment by a Justice of the Peace court affecting title to land, even within the State of the forum, is void and totally ineffective. This would be true *a fortiori* if a Justice of the Peace, a court of inferior jurisdiction, in one State attempted to adjudicate title to land in another State. In the instant case, a deed of trust—benefit of creditors falls into identically the same category as to jurisdiction as a deed to land under the laws of both the District of Columbia and Maryland. Both are committed to courts of superior jurisdiction and denied to courts of inferior jurisdiction. Certainly a judgment of the Municipal Court for D. C. purporting to determine title to land in Maryland would be ineffective and void regardless of affirmance on appeal by the Municipal Court of Appeals for the District of Columbia, an appellate court of inferior and limited jurisdiction which has no jurisdiction to determine title to land. The same must be true as regards the deed of trust—benefit of creditors in this case.

This petitioner is and at all times pertinent hereto has been domiciled and practicing law exclusively in Silver Spring, Maryland. At no time pertinent hereto has this petitioner engaged in any business, owned any property,

or practiced law in the District of Columbia, except for the three cases, all in connection with this Maryland Trusteeship for the Benefit of Creditors, as stated hereinafter, having been admitted specially to represent the defendant, Holiday Homes, Inc., in the Municipal Court for the District of Columbia in these cases only.

In 1954, two Delaware corporations, Holiday Homes, Inc. and Holiday Homes Mfg. Co., Inc., undertook to prefabricate small beach-type cottages for erection on land owned by purchasers. Though in some respects said corporations were operated jointly, the prefabrication plant, including all trucks, tools and equipment, was owned by Holiday Homes Mfg. Co., Inc. and situated at Upper Marlboro, Prince George's County, Maryland. Holiday Homes, Inc. did the selling and maintained sales offices in Upper Marlboro and in Silver Spring, Maryland, as well as in the District of Columbia—where the books were kept until March 4, 1955, and where the bank account was kept as long as they had a bank account, which was until about January, 1955. Houses were sold and erected upon land of purchasers, mostly in Maryland, with some being sold in Virginia and Delaware; but no houses were sold for erection in the District of Columbia, because said houses did not meet building code regulations in the District of Columbia. Said houses were sold on the basis of a small down payment, with the balance to be paid either upon completion of the house or at specific stages of construction. Both said companies were totally owned by the same two stockholders. On or about March 3, 1955 (Appendix, infra, p. 14), the General Manager, who was one of the stockholders, disappeared, leaving no money, but leaving many unpaid employees and other creditors, mostly in Maryland, with some in Virginia and the District of Columbia. Up to that time, this petitioner, who then was practicing law in Silver Spring, Maryland, had not had any connection with either of said companies or their

stockholders. Within a few days subsequent to March 3, 1955, all operations of both companies ceased, the employees left, and several of the creditors employed this petitioner to represent them as their attorney in collecting their claims against one or the other of said corporations. Practically all of the assets of said companies then were domiciled in Maryland, except about $100.00 worth of used office furniture which then was in the office previously used by Holiday Homes, Inc. in the District of Columbia. Most of the creditors likewise were domiciled in Maryland, and since most of the assets of both said companies consisted of money due on houses, mostly in Maryland, in various stages of construction and on which no money could be collected until said houses were completed, it was suggested by said stockholders during telephone conferences between this petitioner in his office in Maryland and said stockholders or their representatives in the District of Columbia, that this petitioner should take over all the assets of said companies and operate the same under a trusteeship for the benefit of all of the creditors, with the understanding that if all creditors thereby could be paid in full, plus the costs of the trusteeship, any assets thereafter remaining would be returned to the stockholders; or in the event all the creditors could not thereby be paid in full, then, and upon the realization of that contingency, the trustee should apply to the Circuit Court in Maryland where the assets were domiciled for permission to liquidate the same (Appendix hereto, infra, p. 14). Pending determination whether such a trusteeship would be agreeable to all the creditors, a working agreement was consummated on March 10, 1955, whereby this petitioner should manage the business of both said companies for 10% of the gross proceeds, until such time as it could be determined whether a valid and workable trusteeship for the benefit of the creditors could be accomplished (App. 40). After obtaining approval from most of the creditors

and no objection from any creditors, petitioner drafted a Maryland Deed of Trust—Benefit of Creditors, on a standard printed Maryland form (Appendix hereto, p. 16), strictly in accordance with Sec. 36, of Art. 47, and Secs. 272, 273 and 276, of Art. 16, Md. Code, 1951 (App. infra, p. 20-21), as agreed, and forwarded the same via U. S. Mail to said interested parties in the District of Columbia for their signatures. Said form was duly signed on or about March 25, 1955, by Carl L. Shipley, as Secretary of both said companies, and by Darwin C. Brown, representing the only other stockholder (Appendix hereto, infra, p. 15), and returned via U. S. Mail to petitioner, who accepted and filed the same on April 4, 1955, in the office of the Clerk of the Circuit Court for Prince George's County, Maryland the county wherein the plant, including the principal assets and principal operation of said companies, then was and always had been domiciled (Appendix hereto, p. 12). In the meantime, the only asset in the District of Columbia, being about $100.00 worth of used office furniture, had been removed to Maryland about March 10, 1955, due to an eviction suit having been filed in the Municipal Court of D. C. by the landlord of the District of Columbia office of Holiday Homes, Inc. due to non-payment of rent (App. 40). No asset of either of said companies remained in the District of Columbia after about March 10, 1955.

The point here being that the Municipal Court's findings that the Deed of Trust was a District of Columbia contract, that the companies' office then (on March 25, 1955) was in the District of Columbia, and that the companies' property was removed from the District of Columbia after March 25, 1955, are erroneous and without any foundation in the evidence.

Several months after the filing of the Deed of Trust in the Circuit Court for Prince George's County, State of Maryland, where all of the assets of said companies

were domiciled and situated, three suits were filed in the Municipal Court for the District of Columbia against one of the companies, Holiday Homes, Inc. (though none of the plaintiffs in said three suits resided in the District of Columbia), which this petitioner, as trustee, felt obliged to defend in the interest of the other 130-odd creditors, since these suits, according to petitioner's information, were groundless in whole or in part. As no money was available to employ other counsel, this petitioner was admitted specially to represent the defendant, Holiday Homes, Inc in the Municipal Court in D. C. in these three cases only.

On August 2, 1956, said Municipal Court notified this petitioner, as counsel for defendant, Holiday Homes, Inc., that hearings in both the other cases—not the Carter case—had been set in said Court in the District of Columbia for August 8, 1956 (App. 17-19). On August 7, 1956, while petitioner was in the Law Library in the District of Columbia preparing for said hearings, due to the fact that petitioner does not maintain District of Columbia law in his own library in Maryland, James P. Donovan, Counsel for plaintiffs, approached this petitioner and inquired whether petitioner would be present at said hearings next day. Upon being informed that in obedience to the notices from the Municipal Court, petitioner would be there for said hearings, said Counsel replied to this petitioner, "If you do, I will have a reception waiting for you." (App. 33-34). Knowing that under the law throughout the United States litigants, witnesses and counsel are immune from service of civil process while in attendance upon the trial of issues in a court in a foreign jurisdiction, including while going to and returning from said hearings, petitioner refused to be bluffed out of sustaining his obligation to the Municipal Court, and to the creditors who were the real parties in interest, and attended said hearings pursuant to said Court's notice. Upon the conclusion of said hearings on August 8, 1956, while the Judge was still on the Bench, Mr.

Donovan, Counsel for plaintiffs in both cases being heard, as well as counsel for plaintiffs in the instant case, motioned to a Deputy Marshal who had been sitting in the courtroom for some time, Mr. Donovan then pointed to this petitioner and said to the Deputy Marshal, "There is your man." Whereupon, said Deputy Marshal served upon this petitioner there in the courtroom the attachment in this case (App. 14-16), as well as an attachment in one of the cases then on hearing (App. 34). This petitioner duly and timely filed and served upon counsel for plaintiffs on August 18, 1956, as one pleading, a Motion to Quash said attachments, due to said unlawful service, and Answer to writ of Attachment or Garnishment, certifying under oath that garnishee had no assets of the defendant, Holiday Homes, Inc. (Appendix hereto, infra, p. 16-17). Since no traverse of garnishee's answer was filed within five days after said answer was filed and a copy served on counsel for plaintiffs, as required by D. C. Municipal Court Rule 69-e (Appendix infra, p. 23), garnishee (Petitioner) filed motion on September 10, 1956, for judgment discharging garnishee (App. 20). Both garnishee's motion to quash service and garnishee's motion for judgment discharging garnishee were denied, the Municipal Court Judge, Judge Munter, then holding that garnishee already had been discharged by operation of law on garnishee's answer since no traverse of said answer had been filed by plaintiff within five days as required by Municipal Court Rule 69-e, supra. Six days after said rulings in the Municipal Court, on September 20, 1956, plaintiff filed traverse of garnishee's answer (Appendix, infra, p. 18). Even then said traverse, not being signed by plaintiff and not being under the oath of anyone, did not anywhere allege that garnishee then had either any money, any property or any credits of the defendant, Holiday Homes, Inc; but instead, said traverse alleged only that there were irregularities in the trusteeship, and that the garnishee,

as trustee for the benefit of creditors of defendant, Holiday Homes, Inc., had collected amounts in excess of plaintiff's claim (Appendix infra, p. 18). Plaintiff simply attacked the validity of the trusteeship; and the law is perfectly clear that the Municipal Court for the District of Columbia had no jurisdiction whatever to consider or adjudicate any of the issues presented by plaintiff's traverse, because, among other things, all issues pertaining to trusteeships for the benefit of creditors have been expressly referred to the United States District Court for the District of Columbia (Please see District of Columbia Code, 1951 Ed., Title 28, Ch. 26, Sec. 28-2602, Appendix infra, p. 22), and not to the Municipal Court.

On May 1, 1957, the trustee petitioned the Circuit Court for Prince George's County, Maryland, for leave to liquidate the assets of said companies on the ground that the possible contingency contemplated in the Deed of Trust agreement (that the creditors could not be paid in full through the operation of the trusteeship) had been determined (Appendix, infra, p. 13-14); and trustee was granted leave by said Court to liquidate said assets (Appendix, infra, p. 3-4). All of these trusteeship proceedings in the Circuit Court for Prince George's County, Maryland, were strictly in accordance with Section 36, Article 47, Sections 276, 272 and 273, Article 16, Maryland Code, 1951 Ed. (Appendix infra, p. 21), which are the provisions of the Maryland Code under which the Deed of Trust—Benefit of Creditors was drafted in the beginning (Appendix, infra, p. 12-16).

On April 16, 1958, nearly a year after the Maryland court order to liquidate the trusteeship assets (Appendix, infra, p. 3-4), and the filing of bond by the trustee on May 1, 1957, as required by Maryland law (Art. 16, Sec. 276, supra), Judge Walsh, another Judge of the Municipal Court for the District of Columbia, ignoring the previous ruling of Judge Munter of the same Court over 19 months

earlier that garnishee already had been discharged by operation of law since plaintiff had not filed a traverse of garnishee's answer within five days as required by Municipal Court Rule 69-e (Appendix infra, p. 23), and, with full knowledge of the existence of the trusteeship proceedings in a court of competent and general jurisdiction in Prince George's County, Maryland (Appendix, infra, p. 3-4), called up said belated traverse of garnishee's answer, ignored said proceedings in the Circuit Court for Prince George's County, Maryland, proceeded to adjudicate all facets of the validity of said trusteeship based upon plaintiffs' traverse, to hold that plaintiffs' traverse—filed 33 days after garnishee's answer—was timely filed, notwithstanding Municipal Court Rule 69-e supra, and to render judgment against this petitioner as garnishee on November 5, 1958 (App. 2-3).

Judge Walsh filed a memorandam, including findings of fact and conclusions of law which showed conclusively that he heard, considered and adjudicated only issues affecting the validity of the trusteeship (Appendix, infra, p. 4-6).

The record of the Municipal Court and the Court below are abundantly clear that said trusteeship involved amounts in excess of $30,000.00 (Appendix, infra, p. 19). It is also clear from plaintiffs' traverse (Appendix infra, p. 18), and the memorandum of the Municipal Court (Appendix infra, p. 4-6), that the Municipal Court had nothing before it and considered nothing except the validity of the trusteeship as a whole. That the Municipal Court for the District of Columbia, whose maximum jurisdictional limit is $3,000.00, was without jurisdiction to consider matters pertaining to the validity of a trusteeship involving in excess of $30,000.00, please see *Boules v. Stonebraker*, 1949, Mun. App. D. C. 65 A.2d 575; *Peterson v. Sucro*, 1938, C. C. A. 4 Cir., 93 F.2d 878, 882.

That the circuit courts for the several counties in Maryland are courts of general and superior jurisdiction, please see Constitution of Maryland, Art. 4, Sec. 20 (Appendix, infra, p. 19), and the Annotated Code of Maryland, 1951 Ed., Art. 26, Sec. 40 (Appendix, infra p. 20).

That the Municipal Court for the District of Columbia is by the statute of its creation specifically made a court of inferior jurisdiction, please see District of Columbia Code, 1951 Ed., Title 11, Sec. 11-101 (Appendix, infra, p. 22).

That the Municipal Court for the District of Columbia had no power to override the proceedings and decrees of the Circuit Court for Prince George's County, Maryland, a court of superior jurisdiction, sitting as a court of equity, on matters relating to identically the same subject matter, which subject matter then was physically present within and under the jurisdiction of said Maryland Court; and that such action on the part of said Municipal Court in a foreign jurisdiction amounted to a violation of the comity between courts, see, *Harkin v. Brundage*, 276 U. S. 36, 48 S. Ct. 268, 72 L. Ed. 457; *Penn Co. v. Pennsylvania*, 294 U. S. 189, 55 S. Ct. 386, 79 L. Ed. 850.

That the Municipal Court for the District of Columbia did not and could not afford this petitioner, as trustee for the benefit of 134 creditors duly appointed by a Maryland State court of general jurisdiction due process of law when it favored the plaintiffs Carter, who likewise were not residents of the District of Columbia, as it did, over the remaining creditors when none of the other creditors were before said Municipal Court and could not be brought before said court, because said court does not have jurisdiction over trusteeship proceedings, and further because said other creditors, as well as the res of the trusteeship, were not domiciled in the District of Columbia, please see

Western Union Tel. Co. v. Pennsylvania, 1961, 368 U. S. 71, 82 S. Ct. 199, 7 L. Ed. 2d 139. Furthermore, the Circuit Court for Prince George's County, Maryland, is not subject to the orders of the Municipal Court for the District of Columbia.

That nothing can be presumed in favor of a judgment of a court of inferior or limited jurisdiction as against a collateral attack, please see *Warm Springs Irr. Dis. vs. May*, 1941, 9 Cir., 117 F.2d 802; *Galpin v. Page*, 18 Wall 350, 21 L. Ed. 959; *McClaughry vs. Deming*, 186 U. S. 49, 22 S. Ct. 786, 46 L. Ed. 1049; *Collins vs. McDonald*, 258 U. S. 416, 42 S. Ct. 326, 66 L. Ed. 692; 49 C. J. S., Judgments, Sec. 425-b, p. 841. The burden is upon respondents, therefore, in every respect to show that the judgment of the Municipal Court for the District of Columbia here in question is valid. No reporter was available to take such evidence as plaintiff adduced, but if the proceedings in the Municipal Court had been recorded, such recording would show conclusively that this petitioner, as garnishee, never was afforded an opportunity to present garnishee's evidence. Respondents contend that since the garnishee was called as a witness for plaintiff, the evidence thus elicited from garnishee constituted garnishee's evidence, but this clearly is not the law.

On January 2, 1959, (App. 37), 8½ months after plaintiff adduced plaintiffs' evidence on April 16, 1958, (App. 37), Judge Walsh of the Municipal Court prepared a Statement of Proceedings and Evidence (App. 37), since no reporter was present to record plaintiff's evidence as aforesaid. Petitioner submits that said statement, being prepared from memory after the elapse of such a long time, is somewhat lacking in accuracy. Yet said statement does not establish that garnishee ever was given an opportunity to present garnishee's evidence; and petitioner knows that although he requested such an opportunity, it was not given him.

That it was erroneous, to say the least, to attach the assets of the trusteeship and/or of this petitioner as trustee, while this petitioner was physically present within the courtroom of the Municipal Court, having gone into said foreign jurisdiction only in respone to notice from the Municipal Court that hearings involving trusteeship cases then would be held in said Municipal Court, please see *Stewart v. Ramsey*, 242 U. S. 128, 37 S.Ct. 44, 61 L.Ed. 192; *Page Co. v. McDonald*, 261 U. S. 446, 43 S. Ct. 416, 67 L. Ed. 737; *Lamb v. Schmidt*, 285 U. S. 222, 52 S. Ct. 317, 76 L. Ed. 720; *Durst v. Tautges, Wilder & McDonald*, 7 Cir., 44 F.2d 507; *Engle v. Manchester*, 46 App. D. C. 220; *Hollige v. Crumpler*, 63 App. D. C. 330; *Stutsman v. Hilltop Farm & Feed Co.*, (Iowa), 45 N. W. 2d 892; In Re *Vanvakis*, 99 N. Y. S. 2d 406; and that the tendency is to extend rather than to restrict the rule of immunity from such service, please see. *J. & H. Stables, Inc., vs. Robinson*, 1960, 221 Md. 365, 157 A.2d 451.

Garnishee (this petitioner) took an appeal of said judgment to the Municipal Court of Appeals for the District of Columbia, without avail (*Pinkston v. Carter*, 150 A.2d 629, Appendix infra, p. 7-12), but petitioner submits that the Municipal Court of Appeals for the District of Columbia was by the statute of its creation made an intermediate or inferior Court of Appeals, whose only function was to review appeals from the Municipal Court and the Juvenile Court for the District of Columbia and not a court of superior or general jurisdiction. Please see District of Columbia Code, 1951 Ed., Title 11, Sec. 11-771 (Appendix, infra, p. 22).

Clearly, the Municipal Court of Appeals for the District of Columbia could not bestow upon the Municipal Court for the District of Columbia powers and jurisdictions which Congress did not give to the Municipal Court for the District of Columbia, and the records are clear regarding the issues submitted to the Municipal Court by

plaintiffs' traverse, and the adjudication of said issues relating to a trusteeship for the benefit of creditors involving in excess of $30,000.00 by the Municipal Court for the District of Columbia.

The Municipal Court of Appeals said, at p. 631:

> "The Trial Court did not administer or supervise a trust; nor did it make any attempt to decide what should be done with the corpus of the general trust fund." (Appendix hereto, infra, p. 8).

Actually the Municipal Court held, as it had to hold in order to render the judgment it did, as follows:

> "2. The said deed of assignment is invalid ...."; etc. (Appendix, infra, p. 6).

Holding that the deed of assignment "is invalid", certainly does dispose of "the corpus of the general trust fund", and in a manner exactly contrary to the prior decree of the Circuit Court for Prince George's County, Maryland (Appendix, infra, p. 3-4).

There is no appeal by right from judgments of the Municipal Court to any court higher than said Municipal Court of Appeals.

Respondents contend, and the courts below agreed, that the judgment of the Municipal Court for the District of Columbia is valid, res judicata and binding; but the question is, which judgment was and is res judicata in fact, the judgment of the Municipal Court for the District of Columbia, a court of inferior and very limited jurisdiction, or the prior orders, decrees and proceedings in the Circuit Court for Prince George's County, Maryland, a court of general or superior jurisdiction?

Although the matter of the prior proceedings in the Circuit Court for Prince George's County, Maryland, was clearly before both the Municipal Court and the Municipal Court of Appeals for the District of Columbia, neither

court considered or ruled upon the full faith and credit, the res judicata or the rule of comity effects of said prior proceedings upon the jurisdiction of the Municipal Court; and neither did either court for the District of Columbia rule upon the lack of due process of law afforded this petitioner by reason of the lack of either the territorial or subject matter jurisdiction in the Municipal Court over the other creditors, the Circuit Court for Prince George's County, Maryland, or the issues involving trusteeships for the benefit of creditors. These jurisdictional questions cannot be res judicata as held by the Courts below, because these issues were not passed upon by the Municipal Court or the Municipal Court of Appeals for the District of Columbia.

CONCLUSION

In conclusion, petitioner respectfully submits that the judgment of the Municipal Court for the District of Columbia, a court of inferior and very limited jurisdiction, is void and should be vacated, because:

(1) Said Municipal Court clearly assumed jurisdiction over matters and property exclusively within both the territorial and subject matter jurisdiction, in custodia legis in fact, of the Circuit Court for Prince George's County, Maryland, proceeded to ignore and to oust the jurisdiction of said Maryland court, a court of superior and general jurisdiction, and to adjudicate the issues pertaining thereto exactly contrary to the prior determinations of said Maryland court covering the same res and issues;

(2) The Municipal Court did consider and adjudicate issues involving the validity of a deed of trust and a trusteeship for the benefit of creditors when clearly it had no jurisdiction or power to do so;

(3) The Municipal Court did adjudicate the Validity of a trusteeship for the benefit of creditors involving amounts in excess of $30,000.00, when the extent of the jurisdiction of said Municipal Court was

strictly limited by statute to matters involving $3000.00 or less;

(4) The Municipal Court did not and could not afford this petitioner, as garnishee, due process of law, because neither the subject matter, the other creditors, nor the Circuit Court for Prince George's County, Maryland were within or could be brought within either the territorial or subject matter jurisdiction of the Municipal Court;

(5) The Municipal Court denied this petitioner due process of law by unlawfully assuming jurisdiction over this petitioner as garnishee, by reason of the service of an attachment upon this petitioner in the courtroom of the Municipal Court when this petitioner had gone into said courtroom in the foreign jurisdiction of the District of Columbia solely in obedience to the orders of said court setting other cases for hearing at said time;

(6) The Municipal Court denied this petitioner due process of law by denying this petitioner, as garnishee, an opportunity to present garnishee's evidence, though garnishee specifically requested such opportunity.

(7) The judgment entered against this petitioner by Judge Walsh on November 5, 1958, is void for the further reason that it was entered more than two years subsequent to the ruling of Judge Munter on or about September 14, 1956, that petitioner already had been discharged upon garnishee's answer of no assets, filed on August 18, 1956, since no traverse had been filed by plaintiff within five days as required by Municipal Court Rule 69-c.

WHEREFORE, petitioner prays that writ of certiorari herein be granted.

Respectfully submitted,

JACK PINKSTON, Petitioner, Pro Se,
A Member of the Bar of this Court
8403 Georgia Avenue
Silver Spring, Maryland
Phone 585-2844

SUPREME COURT OF THE UNITED STATES

NO:

OCTOBER TERM, 1963

JACK PINKSTON, GARNISHEE,

Petitioner,

v.

NICHOLAS M. CARTER, ET UX

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including

January 13, 1964

Byron R. White
Associate Justice of the Supreme Court of the United States

Dated this 30th
day of December, 1963

Nicholas M. CARTER, Ruth A. Carter,

Appellees,

v.

Jack PINKSTON, Garnishee,

Appellant,

No. 9075

UNITED STATES COURT OF APPEALS

FOURTH CIRCUIT

Argued September 25, 1963

Decided September 30, 1963

Appeal from the United States District Court for the District of Maryland at Baltimore; Harrison L. Winter, District Judge.

Jack Pinkston, pro se.

James P. Donovan and Roy C. Frank, Washington, D.C., on brief for Appellees.

Before HAYNSWORTH, BOREMAN, and J. SPENCER BELL, Circuit Judges.

PER CURIAM.

This is an appeal from an order of the district court overruling the appellant's motion to quash certain attachments issued by the district court.

The appellant here seeks to raise again issues which are clearly res judicata. Appellant had his day in court. See Pinkston v. Carter, D. C. Mun. App., 150 A.2d 629. The order of the district court in this case is

Affirmed.

(R. 45) ORDER OF COURT

(Filed May 3, 1963)

The matter of the motion of Jack Pinkston, Garnishee, to Quash Attachments and Answer of Plaintiffs thereto having come on for hearing, and counsel for the respective parties having been heard, it is

ORDERED by the United States District Court for the Dis-

trict of Maryland, this 3rd day of May, 1963, that said motion be and the same is hereby "Denied".

HARRISON L. WINTER,
United States District Judge.

ORDER APPOINTING TRUSTEE

(Supported by triple Certificate of Clerk and Judge of the Circuit Court for Prince George's County, Maryland)

In the Circuit Court for Prince George's County, Md.
Sitting as a Court of Equity

NO. B 1575

In the Matter of

Holiday Homes, Inc. and

Holiday Homes Mfg. Co., Inc.

(In Trusteeship for the Benefit of all their Creditors)

On this, the 1st day of May A.D., 1957, came on regularly for consideration the petition of Jack Pinkston, Trustee for the Benefit of the Creditors of Holiday Homes, Inc. and Holiday Homes Manufacturing Company, Inc., for leave to liquidate the assets of said corporations; and it appearing to the Court that the same should be granted; accordingly, it is,

ADJUDGED, ORDERED AND DECREED that the said petition be, and the same hereby is granted; JACK PINKSTON is hereby named and appointed Trustee to liquidate the assets of said corporations under the direction of this Court; said Trustee hereby is ordered to post good and sufficient bond with the Clerk of the Court, payable as by law provided in the principal sum of TWENTY FIVE

HUNDRED DOLLARS, as security for the faithful performance of the trust herein reposed; said Trustee is hereby instructed and ordered to marshall, inventory and report to this Court all assets, both tangible and intangible, of the said corporations, and to hold the said assets subject to the further orders of this Court.

/s/ JOHN R. FLETCHER,
Judge.

Garnishee's Exhibit No. 1—pg. 54

MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA

MEMORANDUM

This cause having come on to be heard by the Court on plaintiff's traverse to the answers filed herein by Jack Pinkston, garnishee, to the writ of garnishment heretofore served on him on August 8, 1957, and the Court having considered the evidence adduced by the parties relevant to the issues raised thereby, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That on March 25, 1955, defendant, Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc., executed, in the District of Columbia, a deed of assignment for the benefit of creditors to garnishee, Jack Pinkston, as trustee; and certain of the property and assets of the assignors were thereafter transferred to the State of Maryland by the garnishee.

2. That defendant is incorporated under the laws of the State of Delaware. On the date of the deed of assignment the place of business of said defendant was in the District of Columbia. The garnishee was, and is, a resident of the State of Maryland.

3. Said deed of assignment was filed on April 4, 1955 in the Clerk's Office, Circuit Court for Prince George's County, State of Maryland, but no certified copy of a statement of assets, nor a list of creditors, was exhibited to this Court in this case; said deed of assignment contains no provision for giving notice to creditors; it reserves the surplus for the benefit of the assignors, and authorizes the trustee to operate the business so far as he deems practicable.

4. Garnishee admits not having filed a bond for the faithful performance of his trust in the Circuit Court for Prince George's County, State of Maryland. There is no showing by the garnishee that he filed such bond as trustee in the District Court of the United States for the District of Columbia pursuant to District of Columbia Code, 1951 ed., Sec. 28-2603.

5. That in the Operating Statement of Trusteeship filed by the garnishee herein on April 30, 1958 he claimed credit for disbursement to himself from the money belonging to Holiday Homes, Inc., in his possession or charge for trustee's commissions, in the sum of $1,821.38.

6. That at the time of the filing of said garnishee's answer to the said writ of attachment, garnishee had in his possession or charge money or credits belonging to defendant, Holiday Homes, Inc., sufficient to satisfy the plaintiff's judgment.

Conclusions of Law

1. The deed of assignment for benefit of creditors of Holiday Homes, Inc., and Holiday Homes Manufacturing Co., Inc., is a District of Columbia contract. To be valid it was required to be filed among the land records of the District of Columbia (Code, 1951 ed., Sec. 28-2602).

2. The said deed of assignment is invalid for the reasons that it was not so recorded within five days from the date of execution, as required by the Code (1951 ed., Sec. 28-2602); nor was the trustee a resident of the District of Columbia, as required by said section; the instrument reserves the surplus for the benefit of assignors; no creditors are named therein; no provision is made for giving notice to creditors; and the provision which authorizes the trustee to "operate the said business so far as to said Trustee seems practicable" is a means by which creditors may be hindered and delayed in the collection of their claims. *Kansas City Packing Co. v. Hoover*, 1 App. D. C. 268 (1893).

3. The garnishee may not lawfully claim credit for disbursement to himself from the money belonging to defendant in his possession or charge for trustee's commissions, amounting to $1,821.38, as shown by the statement which he filed in this cause.

4. Plaintiff is entitled to a judgment of condemnation against Jack Pinkston, garnishee, in the amount of $1,345.29.

Accordingly, there will be entered a judgment of condemnation in favor of plaintiff against Jack Pinkston, garnishee, in the sum of $1,345.29.

Appropriate entry will be made as of September 29, 1958.

/s/ LEONARD P. WALSH,
Chief Judge.

Garnishee's Exhibit No. 1—pgs. 20, 21 and 22

Jack PINKSTON, *Appellant*,

v.

Nicholas M. CARTER, *Appellee*.

No. 2349

MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Submitted March 9, 1959

Decided May 1, 1959

As Modified on Denial of Rehearing June 3, 1959

Jack Pinkston, Silver Spring, Md., appellant, pro se.

James P. Donovan, Washington, D. C. for Appellee.

Before Rover, Chief Judge, Hood Associate Judge, and Cayton (Chief Judge, retired) sitting by designation under Code, § 11-776 (b).

Cayton, *Acting Judge*.

On a traverse to the answer of a garnishee there was a trial, and plaintiff was awarded judgment. Garnishee brings this appeal.

Plaintiff had sued and obtained judgment for $1,286.50 against Holiday Homes, Inc., for breach of a building contract. On that judgment he issued an attachment against Jack Pinkston, the attorney who had appeared for defendant. Mr. Pinkston moved to quash the attachment and also answered the interrogatories exhibited to him by denying that he had in his possession any money, property or credits of the judgment defendant. After certain motions and other proceedings (to which we shall refer later), trial was had on the issues presented by garnishee's answer and plaintiff's traverse thereto, as provided by Code 1951, 16-317. The trial court made written findings of fact

and conlusions of law, decided for plaintiff, and ordered garnishee to pay the amount of the judgment.

We give our first attention to a jurisdictional question raised by garnishee-appellant. At trial he contended that he was not accountable to plaintiff because in acquiring assets and funds of the judgment defendant he had acted as trustee for the benefit of creditors. Appellant says that because the trusteeship involved transactions totalling some $35,000, which is in excess of the trial court's jurisdiction, it had no right to "adjudicate title" to the total fund. He also says that under Code 1951, § 28-2602 such a trust is to be executed under the supervision and control of the United States District Court. These arguments have no validity here. The trial court did not administer or supervise a trust; nor did it make any attempt to decide what should be done with the corpus of the general trust fund. In a dispute between plaintiff and garnishee, involving much less than its $3,000 jurisdiction, the court decided that there were funds in the hands of garnishee which should be subjected to payment of plaintiff's judgment. This the trial court clearly had a right to do.

Appellant charges there was error in denying his motion to quash the attachment. The motion asserted that service of the attachment was void because made while garnishee, a nonresident, was attending court in a representative capacity in another cause. (The garnishee is a Maryland lawyer with offices in nearby Silver Spring.) At trial this contention was renewed by his attorney, but no testimony was taken on the motion to quash, and the record indicates no offer of proof in support thereof. We refer to what seems to be the general rule: that a nonresident attorney who voluntarily enters a jurisdiction to conduct legal business is not immune from service of civil process. See Pitman v. Cunningham, 100 N. H. 49, 118 A.2d 884, and cases there cited.

Next we consider appellant's contention that he was entitled to be discharged as garnishee because plaintiff's traverse was filed out of time. A rule of the trial court provides:

> "After the filing of the answer of a garnishee, he may give notice thereof to the party of whose instance the garnishment was issued, and if such party shall not join issue thereon within 5 days after such notice, the garnishee shall be entitled as of course to judgment in accordance with his answer, unless the time shall be extended by the court." Mun. Ct. Civ. R. 69 (e).

It is true that plaintiff's traverse was not filed within the five-day period mentioned in the quoted rule. But it is also true that along with his answer garnishee had interposed a motion to quash, charging invalid service of process. This challenged the jurisdiction of the court over garnishee's person and had the effect of staying further action on the merits by either party until the jurisdictional question was settled. If the motion were granted there would be nothing for plaintiff to traverse. Not until the motion was denied was it determined that garnishee was properly before the court. Plaintiff filed his traverse six days later. This satisfied the five-day rule because there was an intervening Sunday. Mun. Ct. Civ. R. 6 (a).

Turning to assignments of error which challenge the correctness of the decision below, it needs to be said that in appellant's brief there is a formidable array of factual statements which are not to be found in the record. It also needs to be said, as has been done time and again, that appellate review must be limited to matters in the official transcript of record and cannot be based on statements of counsel which speak against the record either by way of contradiction or by unauthorized additions thereto.

Following the disappearance of the president of Holiday Homes, Inc., in March 1955, any instrument was pre-

pared entitled "Deed of Trust—Benefit of Creditors," conveying the assets of the company in trust to Jack Pinkston. The deed of trust was executed by a lawyer purporting to act as corporate secretary. Appended thereto was the consent of another attorney acting for a stockholder. The trial judge found, among other things, that the deed of trust had been executed in the District of Columbia and that the company's place of business was then in the District; that Mr. Pinkston was and is a resident of Maryland; that the deed contained no provision for giving notice to creditors, but reserved any surplus for the benefit of assignors (stockholders); that though it was filed in a Maryland Circuit Court, Mr. Pinkston admitted that he had not filed with that court bond for the faithful performance of his trust;[1] that he had not filed such a bond in the United States District Court for the District of Columbia as required by Code 1951, § 28-2603; that Mr. Pinkston claimed credit for disbursement to himself of $1,821.38 as trustee's commissions. These findings were all supported by the evidence and it was stipulated in writing that Mr. Pinkston had received "in excess of $1,500.00 on account of and by reason of contracts whereby Holiday Homes, Inc. agreed to construct and erect houses for various purchasers of such houses."

The trial judge ruled that the "deed of assignment" was a District of Columbia contract, and was required to be filed among the land records in this jurisdiction. He continued:

> "The said deed of assignment is invalid for the reasons that it was not so recorded within five days from the date of execution, as required by the Code (1951 ed., Sec. 28-2602); nor was the trustee a resident of the District of Columbia, as required by said section; the instrument reserves

1. It seems that he did file a bond there some two years later in connection with liquidation proceedings.

> the surplus for the benefit of assignors; no creditors are named therein; no provision is made for giving notice to creditors; and the provision which authorizes the trustee to 'operate the said business so far as to said Trustees seems practicable' is a means by which creditors may be hindered and delayed in the collection of their claims. Kansas City Packing Co. v. Hoover, 1 App. D. C. 268".

These rulings were supported by ample evidence and based on sound legal principles. Indeed, the trial judge might very properly have ruled the deed of trust invalid for an additional reason. The lawyer who executed it as secretary of the company freely testified that he was not then in fact secretary and had not held that office (or any other) for some eight months. He said that, after the president disappeared there was pressure from Internal Revenue Bureau and from creditors, and "he had a feeling he should do something to protect the interest of the stockholders and creditors." We may agree that his motives and Mr. Pinkston's, too, were the most honorable. But we cannot agree that by the "deed of trust" we have described there was created a lien or right superior to that of the attaching judgment creditor. The court below was right in subjecting funds admittedly in garnishee's hands to the satisfaction of the judgment. In the circumstances of this case the claim of the garnishee (trustee) to commission must yield to the claim of plaintiff.

See, in general support of the views we have expressed, Keane v. Chamberlain, 14 App. D. C. 84; Haverhill Shoe Novelty Co. v. Leader Shoe Co., 87 N. H. 366, 180 A. 242; Pritchett v. Tolbert, 210 N. C. 644, 188 S. E. 71; Saligman v. Ginsburg, Sup., 102 N. Y. S. 2d 142; 3 Am. Jur., Assignments for Benefit of Creditors, Sec. 114.

It is proper to mention another matter. Garnishee filed a motion for new trial which was overruled. Later

he filed a motion for reconsideration supported by lengthy affidavits. This motion was also overruled. These rulings have not been assigned as error and are not before us for review. But we think it fair to mention that to the extent that the motions and affidavits assert that garnishee was given no opportunity to present his evidence at the trial, they do not agree with the approved statement of evidence. That statement reveals that Mr. Pinkston was called as a witness for plaintiff and testified on direct examination and also at considerable length on cross-examination by his own counsel; also that plaintiff called the corporate secretary who testified fully on direct and on cross-examination as well; also that the court instructed garnishee to file a financial statement and that garnishee asked and was given leave to file certain "late exhibits." Two months later the case was again argued and then decided; and at no time during trial or argument was there any request by garnishee or his counsel for an opportunity to offer additional testimony.

Affirmed.

EXHIBIT "A"

DEED OF TRUST—BENEFIT OF CREDITORS

Apr 4 11:24 A.M., 1955
Recorded
W. Waverly Webb
Clerk Circuit Court
Book 1842, Pg. 155

This Deed, Made this Twenty-Fifth day of March in the year nineteen hundred and Fifty-Five by Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc.

Whereas, the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. are indebted unto sundry persons in various sums of money, which they are unable to pay in full and desire to convey all their prop

erty and estate to Jack Pinkston, Trustee in trust for the benefit of their creditors as hereinafter set forth.

See Schedule A attached hereto

Now, Therefore, this Deed Witnesseth That, in consideration of the premises and the sum of five dollars, the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. do hereby grant, convey and assign unto the said Jack Pinkston, Trustee his heirs, personal representatives and assigns, all their trucks, plant, tools, furniture, fixtures, equipment, business, assets, accounts, claims, demands, estate and property of every nature, kind or description, real and personal, in possession, reversion, remainder or expentancy, and wheresoever situated.

Book 1842, Page 156

To Have And To Hold the same unto the said Jack Pinkston, Trustee his personal representatives and assigns, in trust and confidence, nevertheless, for the following purposes, to wit:

First. To take possession of the said estate and property, and without unnecessary delay, to operate the said business so far as to said Trustee seems practicable and otherwise to convert the same into money by the sale of so much as is salable, and collection of so much thereof, as is collectable, and to apply the proceeds, after the payment of the lawful expenses of this trust including a commission of 10 per cent. of the gross proceeds (exclusive of loans or advances) received, for his services according to law in such cases, and after the payment of the wages or salaries due to the clerks, employees or servants of said grantor contracted within three months anterior to the execution of this deed, to the payment in full of the debts due and owing by the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. without preference or priority, except as by law provided, if the net

proceeds shall be sufficient therefor, and if insufficient, then to the payment of the aforesaid debts pro rata, without preference or priority except as aforesaid, as the same would be decreed to be paid by a Court of Equity.

SECONDLY. After the payment in full of all the debts aforesaid, and all claims and demands whatsoever against the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. for which they may be liable, in trust to pay the surplus, if any there be, to the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. their proper representatives and assigns.

AND the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. for the purposes aforesaid, do hereby make, constitute and appoint the said Jack Pinkston, Trustee their true and lawful attorney, irrevocable, in his name or otherwise, to ask, demand, sue for, recover and receive of and from all and every person or persons all the property, goods, chattels, wares, merchandise, debts or sums of money due, owing or belonging to the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. and hereby granted and conveyed.

Book 1842, Page 157

and for all receipts and deliveries to make, execute and acknowledge due acquitances, and to compound for any doubtful debts; and further to do all other lawful acts required to be done in the premises in the due and lawful execution of this trust.

(Be it remembered that on this, the 25th day of March A.D., 1955, the conditions existing with reference to officers and stockholders of the within named companies are substantially as follows, to-wit: That Samuel M. Selden, President and Treasurer, and Stockholder of said companies, was last heard from and presumably disappeared on March 3, 1955, and has not again been heard from to

this date; that the office of said companies was closed on or about March 7, 1955, and has not been reopened for business to this date; that the office of Vice President, as well as the stock formely held by Wm. Greenough 2d purportedly were transferred sometime ago to Mrs. Wilda P. Mackenzie, but Mrs. Mackenzie has declared such transaction void, and now neither party to said transaction will accept responsibility of the said office or acknowledge ownership of said stock; but both said parties have been notified of this agreement and have expressed in writing their approval hereof insofar as they each feel themselves affected; this leaves only Carl L. Shipley, Secretary of said companies, and Darwin Charles Brown, Attorney for Mrs. Marie W. Ridder, who are affected hereby; and their approval is affixed hereto.)

As Witness the hand and seal of the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. the day and year first above written.

Holiday Homes Manufacturing Co., Inc.
Holiday Homes, Inc.

(Seal)

by /s/ Carl L. Shipley (Seal)
Carl L. Shipley,
Secretary.

(Seal)

The consent of Mrs. Marie W. Ridder, as a stockholder, to this Deed of Trust is hereby given by her duly authorized attorney.

/s/ Darwin Charles Brown,
Darwin Charles Brown,
Attorney for Mrs. Marie W. Ridder.

District of Columbia, to wit:
State ~~of Maryland~~, , to wit:

I hereby Certify, That on this 1st day of April in the year one thousand nine hundred and fifty-five before me, the subscriber, Eleanor K. Cheek, a notary public ~~of the State of Maryland~~, in and for the District of Columbia aforesaid, personally appeared Carl L. Shipley, Secretary, Holiday Homes, Inc., Holiday Homes Mfg. Co., Inc. acknowledged the foregoing Deed to be their act.

/s/ Eleanor K. Cheek

My Commission Expires October 1, 1957.

(Seal)

Garnishee's Exhibit No. 1, Pgs. 40 to 42.

MOTION TO QUASH, AND ANSWER TO WRIT OF ATTACHMENT OR GARNISHMENT ISSUED AND SERVED ON AUGUST 8, 1956

(Filed August 18, 1956)

To the Honorable, the Judge of said Court:

Garnishee, appearing specially herein for the purpose of this motion and answer only, says:

1. That the said writ of attachment or garnishment issued and served upon this garnishee on August 8, 1956, should be quashed on the ground that the service of process was irregular and void because if was served on the garnishee, who is a non-resident of the District of Columbia and does not maintain or conduct any business within the District of Columbia, while he was in attendance upon this Court in a representative capacity in another cause and had entered the District of Columbia solely for the purpose of so appearing in said cause, which then was set for hearing in this Court.

2. Answering further herein, garnishee says, (a) That this garnishee was not indebted to defendant Holiday Homes, Inc., either at the time of service of the writ of attachment or garnishment herein on August 8, 1956, or at the time of the making and filing of this answer, and neither was garnishee indebted to the said defendant at any time between said times or dates; (b) That this garnishee did not have in his possession or charge any goods, chattels, or credits of the defendant, Holiday Homes, Inc., either at the time of the service of the writ of attachment or garnishment herein on August 8, 1956, or at the time of the making and filing of this answer, and neither did this garnishee have in his possession or charge any of the goods, chattels, or credits of the said defendant at any time between the said times or dates; and, (c) That the said Holiday Homes, Inc., is not at the time of making and filing this answer, was not at the time of the service of the writ of attachment or garnishment herein on August 8, 1956, and never has been employed by this garnishee.

Wherefore, garnishee prays: That the said writ of attachment or garnishment, issued and served herein upon this garnishee on August 8, 1956, be in all things quashed; and that plaintiff be denied any recovery whatsoever by reason thereof.

Respectfully submitted,

Jack Piskston,
Garnishee

Supported by Affidavit and Certificate of Service on Attorney for Plaintiff.
Garnishee's Exhibit No. 1, pgs. 10 and 11.

TRAVERSE OF ANSWER OF JACK PINKSTON, GARNISHEE

(Filed September 20, 1956, 3:54 P. M.)

Plaintiff traverses the Answer of the Garnishee, Jack Pinkston, to the writ of attachment or garnishment issued and served herein on August 8, 1956, and avers that representing himself as trustee for the benefit of creditors of defendant, Holiday Homes, Inc., he has collected from debtors of Holiday Homes, Inc. an amount in excess of the sum herein attached, which is subject to attachment for the following reasons.

1. Said garnishee, Jack Pinkston, is not the trustee for benefit of creditors of defendant, Holiday Homes, Inc.

2. The purported assignment for benefit of creditors was not filed with the Clerk of the Court having jurisdiction of the matter.

3. The Circuit Court for Prince Georges County, Maryland, has no jurisdiction over the funds, property or other assets of Holiday Homes, Inc.

4. Said garnishee, Jack Pinkston, has failed to post bond with the Clerk of the Circuit Court for Prince Georges County, Maryland, as required by Article 16, Section 275 of the Code of Laws of the State of Maryland, 1951 Edition.

5. Said garnishee, Jack Pinkston, has failed to qualify in the District of Columbia as trustee for the benefit of creditors in the District of Columbia.

6. Said garnishee, Jack Pinkston, has continued to carry on the business affairs of Holiday Homes, Inc., in an endeavor to operate its business for the benefit of stockholders of Holiday Homes, Inc., which vitiates the purported assignments.

Guy M. Bayes

Garnishee's Exhibit No. 1, pgs. 13 and 14.

EXCERPTS FROM ITEMIZED STATEMENT OF ACCOUNT OF TRUSTEESHIP FILED PURSUANT TO MUNICIPAL COURTS ORDER (App. 42) COVERING PERIOD FROM MARCH 25, 1955 TO MAY 1, 1957

Gross Receipts	$32,737.29
Total Expenditures	$34,246.06

Garnishee's Exhibit No. 1—pgs. 16, 17

Statement of Account
THE BANK OF SILVER SPRING
SILVER SPRING, MD.

Jack Pinkston, Trustee Account
8403 Georgia Ave.
Silver Spring, Maryland

Checks	Deposits	Date	No. of Checks	Balance	
	Balance Forwarded	JUL 30-56		46.33	F
10.00		JUL 31-56	1	36.33	1
20.55		AUG 2-56	2	15.78	2
1.30sc		AUG 16-56	2	14.48	3
12.50		AUG 23-56	3	1.98	4

Garnishee's Exhibit No. 1—pg. 47

EXCERPTS FROM MARYLAND CODE

The Constitution of Maryland, Article 4, Section 20, reads as follows:

> "Sec. 20. A Court shall be held in each County of the State, to be styled the Circuit Court for the County in which it may be held. The said Circuit Courts shall have and exercise, in the respective Counties, all the power, authority and jurisdiction, original and appellate, which the present Circuit Courts of this State now have and exercise, or which may hereafter be prescribed by Law."

Maryland Code, 1951 Ed., Article 26, Section 40, reads as follows:

> "40. The circuit courts for the several counties are the highest common law courts of record and original jurisdiction within this State, and each has full common law powers and jurisdiction in all civil and criminal cases within its county (except where by law the jurisdiction has been taken away or conferred upon another tribunal); and all the additional powers and jurisdiction given by the constitution and by law."

SECTION 272, ARTICLE 16, MARYLAND CODE (1951):

"In all cases where a trustee has been appointed by will or deed to execute any trust, and any person interested in such trust shall make it appear to the court that it is necessary for the safety of those interested in the execution of the trust, that the trustee should give bond and security for the due execution of the trust, the court may order that such bond be given, on or before such day as the court shall name; and if the bond, with such security as the court shall approve, be not given by such trustee, then the court may remove such trustee and appoint one in his stead, who shall give such bond and security as the court may require."

SECTION 273, ARTICLE 16, MARYLAND CODE (1951):

"In all cases where any trustee has been appointed by will or deed to execute any trust, then the testator or grantor, as the case may be, in any such instrument may, if he so desires, provide that before any such trustee shall enter upon the performance of duty, that such trustee shall file with the Clerk of the Circuit Court in any of the Counties of this State * * * where such will was probated or such deed recorded * * * a bond to the State of Maryland for the due execution of such trust, with surety, in

such penal amount as may be specified by such testator or grantor; such bond to be approved by the Judge or the Clerk of such Court and recorded."

Section 276, Article 16, Maryland Code (1951):

"When any estate, real, personal or mixed shall be limited or conveyed to any trustee as security for debt, or to be sold upon a contingency, it shall not be necessary for such trustee to file a bond until after the contingency happens, or a sale is about to be made in pursuance of the power contained in the deed or instrument creating the trust, and every such trustee before making sale shall file with the clerk of the court in which the deed or instrument creating the trust is recorded a bond in such penalty as the clerk may prescribe. * * *"

Section 36, Article 47, (Insolvents), Maryland Code (1951):

"The provisions of this Article shall not be construed to apply to or in any manner affect or impair any Bona Fide deed or conveyance by whomsoever made which may be executed and recorded after the 6th day of April, 1894, and which by its terms conveys all the property and estate of the grantor or grantors therein to a trustee or trustees therein named in trust for the equal benefit of all the creditors of said grantor or grantors without preference or priority save as sanctioned by this Article. * * * the trustee or trustees named in such deed or conveyance may lawfully * * * proceed to fully administer the trusts created by such deed or conveyance and distribute the property and estate passing thereunder, or the proceeds thereof, to the persons entitled thereto under the supervision of the equity court having jurisdiction over the same."

DISTRICT OF COLUMBIA CODE, 1951 ED.

District of Columbia Code, 1951, Ed., Title 11, Sec. 11-101 reads as follows:

"The judicial power in the District shall be vested in—

'First. Inferior courts, namely, Municipal Court, Juvenile Court of the District of Columbia, and the Police Court; and,

Second. Superior courts, namely the District Court of the United States for the District of Columbia, the United States Court of Appeals for the District of Columbia, and the Supreme Court of the United States."

District of Columbia Code, 1951 Ed., Title 11, Sec. 11-771, reads as follows:

"There is hereby established and created an intermediate appellate court for the District of Columbia to be known as "The Municipal Court of Appeals for the District of Columbia," for the hearing of appeals from judgments and orders of the Municipal Court for the District of Columbia as established by Subchapter I, and of the Juvenile Court of the District of Columbia, as hereinafter provided."

TITLE 28, CHAPTER 26—ASSIGNMENTS FOR BENEFIT OF CREDITORS, SEC. 28 2602:

"The assignee in every such assignment shall be a resident of the District of Columbia, his assent shall appear in writing in, or at the end of, or indorsed on, the assignment, and the assignment shall be invalid unless duly acknowledged and recorded within five days after its execution in the land records of the said District. The trust created by such assignment shall be executed under the supervision and control of the United States District Court for the District of Columbia."

Municipal Court for District of Columbia, Civil Rule 69 (e) provides:

"After the filing of the answer of a garnishee, he may give notice thereof to the party at whose instance the garnishment was issued, and if such party shall not join issue thereon within 5 days after such notice, the garnishee shall be entitled as of course to judgment in accordance with his answer, unless the time shall be extended by the court."